IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 7862 of 2004

Between:

M/s Sambala Automotives, rep. by its Proprietor
B.Chaya Devi, W/o B.B.Raju, R/o H.No.497,
Street No.7, Gagan Mahal Road, Domalguda,

Hyderabad.

..... PETITIONER

AND

1. The Deputy Commissioner,
Commercial Tax, Officer III (FAC),
Kurnool, Kurnool District.
2. Deputy Commercial Tax Officer,
Kurnool, Kurnool District.
3. The Additional Commissioner of Commercial
Taxes, C.T.(Legal), Commissioner of Commercial Taxes,
Hyderabad.

..RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction, specially in the nature of Writ of Certiorari, calling for the records relating to the orders passed by the 3rd respondent vide CCTS Ref.L(C)/599/2004 dated 27-3-2004 and quash the same as illegal and without any justification and consequently direct the stay of

collection of penalty of Rs.1,24,54,805/- pending disposal of the Appeal No.AR110/2004 before the A.P.S.T.A.T. Hyderabad.

Counsel for the Petitioner: MR. A. MAHADEV

Counsel for the Respondents: MR. K. RAJI REDDY, SPECIAL STANDING COUNSEL FOR COMMERCIAL TAX

The Court made the following:

O R D E R: (Per Hon'ble Sri Justice B.Sudershan Reddy)

The averments made in the counter affidavit filed by the Commercial Tax Officer disclose the conduct of the petitioner and the evasive tactics adopted by him in payment of the legitimate tax due to be payable by the petitioner to the State. It may not be really necessary to recapitulate the facts in detail since the writ petition itself arises out of an interlocutory order passed by the competent authority refusing to grant stay of collection of the tax during the pendency of the appeal preferred by the petitioner.

This Court in exercise of its jurisdiction under Article 226 of the Constitution of India normally does not interfere with such interlocutory orders as the one impugned in this writ petition. The interlocutory order passed by the authority did not create any irreversible situation so as to be corrected by this Court in exercise of its judicial review jurisdiction. The order does not suffer from any error apparent on the face of the record requiring our interference.

Be it as it may, this Court, vide its order dated 27.04.2004 while directing notice before admission requiring the respondents to show cause as to why this writ petition should not be entertained and appropriate orders be passed, also directed the petitioner herein to deposit 25% of the penalty within a period of four weeks. In the counter affidavit filed by the respondents it is stated in clear and categorical terms that the petitioner failed to deposit 25% of the penalty. Needless to observe that this court's order is a conditional order and failure to deposit 25% of the penalty automatically results in dismissal of the stay petition.

In the circumstances, nothing survives, as such, requiring further adjudication. Even otherwise, we find no infirmity in the order passed by the authority in rejecting the stay petition filed by the petitioner.

However, the appeal preferred by the petitioner pending before the Sales Tax Appellate Tribunal is required to be disposed of in its own merits uninfluenced by the dismissal of this writ petition and observations, if any, made in this order. The appeal shall be disposed of as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

The writ petition accordingly shall stand dismissed without any order as to costs.

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B. SUDERSHAN REDDY, J.

Date:02-12-2004.

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T.CH. SURYA RAO, J.

Note: Dispatch copy of

order within (3) days.

(B/o)

GS/KS

To

1. The Deputy Commissioner,
Commercial Tax, Officer III (FAC),
Kurnool, Kurnool District.

2. Deputy Commercial Tax Officer,
Kurnool, Kurnool District.

3. The Additional Commissioner of Commercial

Taxes, C.T.(Legal), Commissioner of Commercial Taxes,
Hyderabad.

4. Two C.D. copies